

REMARKS

Applicant has amended the first paragraph of the specification, as requested by the Examiner, to update the status of parent application 10/234,420.

Applicant notes the comments of the Examiner with respect to the IDS. Applicant's attorneys have found that inadvertently an incorrect list of references was copied into the IDS originally filed. Thus, the foreign references and non-patent references cited on the initially filed IDS were incorrect and are inapplicable to the present application. Non-patent documents were submitted in and cited in the parent application. However, those, along with a US patent reference cited by the Examiner in the parent applicant, were inadvertently not included in the originally submitted IDS in this application. A Supplemental IDS is enclosed herewith along with copies of the cited non-patent references and the omitted US patent reference.

The Examiner has rejected Claims 1-3 and 12-13 under the doctrine of obviousness-type double patenting as unpatentable over either Wathen 6,729,805 or Wathen 6,443,661 in view of Thomas. The Examiner states that Thomas teaches that it is well known to provide sodium hydroxide for inhibiting dust as set forth at column 13, line 67. Applicant disagrees that Thomas teaches that it is well known to provide sodium hydroxide for inhibiting dust. Thomas teaches a mold and dust inhibiting composition including an aqueous solution of one or more salts of propionic acid and deliquescent material and preferable a humectant. In the referenced portion of column 13, and continuing over into column 14, Thomas teaches that the "propionate salt solution of the present invention is produced by mixing propionic acid with base which may be ammonium hydroxide, sodium hydroxide, potassium hydroxide, or a mixture of any two or more of these bases." Thomas had previously indicated that the salts of the propionic acid are the important mold

inhibiting ingredients. Thomas continues from the cited statement that “The quantity of base relative to the propionic acid is adjusted to provide the desired pH.” Thomas then goes on to explain that the pH is important for the mold control, reduction in corrosiveness, and palatability. Nothing about dust control is mentioned in relation to the pH or the sodium hydroxide. In column 14, lines 35-64, Thomas talks about dust control and says, lines 54-62, “When the poultry feed and litter are sprayed with the liquid product of the invention, the deliquescent material in the product, and also preferably the humectant in the product, cause the moisture to be locked into the product, preventing moisture from evaporating off of surface portions of the feed and litter. The result is that dust cannot be generated from the feed or litter.”

From the above teachings from Thomas, it is clear that the sodium hydroxide is used in creating the propionate salt solution for mold control and that the deliquescent material and the humectant provide the dust control. There is no teaching of sodium hydroxide for dust control in Thomas and nothing in Thomas suggests using sodium hydroxide as a mixing aid in mixing fatty acid containing material and water to form a dust control composition. Therefore, Thomas does not make obvious the addition of sodium hydroxide to applicant’s solution of water and fatty acid containing material of applicant’s prior cited patents. Further, as described in the application, the sodium hydroxide is not used in applicant’s composition for dust control, but as a mixing aid to promote easier mixing of the fatty acid containing material and the water. Nothing in Thomas suggests that sodium hydroxide promotes easier mixing of fatty acid containing material with water. Thus, even if the sodium hydroxide was used in Thomas for dust control, there would be no suggestion that it be included in applicant’s composition as a mixing aid. Since the addition of the

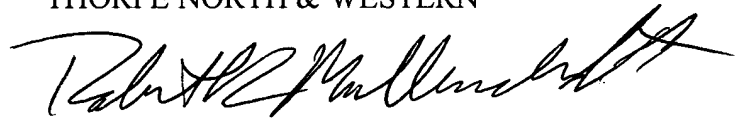
sodium hydroxide to applicant's solution of water and fatty acid containing material during mixing to aid in mixing the two is not obvious from Thomas, no terminal disclaimer should be required.

In his Detailed Action, the Examiner has rejected Claims 1-3 and 12-13 as indicated above, and has objected to Claims 4-9 and 14-17 as being dependent upon a rejected base claim. In the Office Action Summary, the Examiner has indicated that Claims 1-3 and 10-13 are rejected. However, Claims 10 and 11 are not specifically rejected or objected to by the Examiner in his Detailed Action. Thus, applicant is not clear as to the status of Claims 10 and 11.

Please charge any additional fees due, or deposit any overpayments, to Deposit Account No. 20-0100 of the undersigned.

Respectfully,

THORPE NORTH & WESTERN

A handwritten signature in black ink, appearing to read "Robert R. Mallinckrodt", written in a cursive style.

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